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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-362

No. COA21-394

Filed 17 May 2022

Orange County, No. 20-CVS-1359

MATTHEW MITCHELL, KAILA MITCHELL, FRANKLIN GARLAND, BETTY GARLAND, JAMES GARLAND, ISABEL GARLAND, RICK SUMMERS, MYRA GWIN-SUMMERS, JULIAN HALL, BENITA WICKER HALL, JUSTIN MITCHELL, GERALD SCARALETT, BRANDON SNEED, ANGELA SNEED, JOSHUA HAM, DUSTIN WILLIAMS, DAVID BARLOW, and RHONDA BARLOW, Plaintiffs,

v.

ORANGE COUNTY, ORANGE COUNTY BOARD OF COMMISIONERS, and TERRA EQUITY, INC., Defendants.

Appeal by Plaintiffs from order entered 8 March 2021 by Judge Allen Baddour in Orange County Superior Court. Heard in the Court of Appeals 12 January 2022.

Ellis & Winters LLP, by Michelle A. Liguori, for the Plaintiffs-Appellants.

Fox Rothschild LLP, by Matthew Nis Leerberg, Kip D. Nelson, and Manning, Fulton & Skinner, P.A., by Judson A. Welborn, and James Bryan, for the Defendants-Appellees.

DILLON, Judge.

¶ 1 This matter involves the rezoning of a tract of land approved by Orange County. This appeal concerns whether Plaintiffs, who own various tracts near the

rezoned tract, have standing to collaterally attack the rezoning decision. We affirm the trial court's order dismissing the matter based on Plaintiffs' lack of standing.

I. Background

¶ 2 Orange County adopted an ordinance (the "Ordinance") rezoning a 12-acre tract of land (the "Property") owned by Defendant Terra Equity, Inc., from "Rural-Residential," to a more development-friendly designation of "Master Plan Development" ("MPD-CZ"). The Property is adjacent to approximately 150 acres of land already zoned as MPD-CZ and also owned by Terra Equity. Terra Equity sought the rezoning of the Property so that it could combine it with its adjacent 150 acres for a warehouse project.

¶ 3 Plaintiffs are owners of various tracts near the Property. They filed this present action against Orange County, alleging that the Ordinance constituted illegal spot-zoning and was otherwise arbitrary and capricious. Terra Equity was allowed to intervene and moved to dismiss for lack of standing and for failure to state a claim. The trial court granted the motion to dismiss with prejudice for lack of standing. Plaintiffs timely appealed.

II. Standard of Review

¶ 4 "In our de novo review of a motion to dismiss for lack of standing, we view the allegations as true and the supporting record in the light most favorable to the non-moving party." *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644, 669 S.E.2d

279, 283 (2008).

III. Analysis

¶ 5 "The General Assembly has delegated to the legislative body of cities and incorporated towns the power to adopt zoning regulations and from time to time, to amend or repeal such regulations." *Taylor v. Raleigh*, 290 N.C. 608, 618, 227 S.E.2d 576, 582 (1976) (quotation omitted).

¶ 6 "Zoning decisions are typically characterized as being in one of four different categories – legislative, advisory, quasi-judicial, and administrative." *County of Lancaster v. Mecklenburg County*, 334 N.C. 496, 507, 434 S.E.2d 604, 612 (1993).

¶ 7 In this present matter, the passage of the Ordinance to rezone the Property by the County was legislative in nature. *See id.* at 513, 434 S.E.2d at 615 (passage of an ordinance to change zoning is a "legislative" act).

¶ 8 "[T]he validity of a municipal zoning ordinance . . . may be determined in a properly constituted action under our Declaratory Judgment Act." *Taylor*, 290 N.C. at 620, 227 S.E.2d at 583. However, "[o]nly those persons who [have] a specific personal and legal interest in the subject matter affected by the zoning ordinance and who are directly and adversely affected thereby have standing to challenge a legislative zoning decision." *Lancaster*, 334 N.C. at 503 n.4, 434 S.E.2d at 610 n. 4 (internal marks and citations omitted).

¶ 9 While the diminution of one's property value might be sufficient to establish

standing from a *non-legislative* decision regarding the use of a nearby tract, our jurisprudence suggests that to challenge a legislative decision to rezone a nearby tract, a plaintiff must show more. *See id.* at 503 n.4, 434 S.E.2d at 610 n. 4; *see also Jackson v. Guilford Cty. Bd. of Adjust.*, 275 N.C. 155, 161, 166 S.E.2d 78, 82 (1969) (landowner has no standing to challenge the change of zoning to a nearby tract based solely on an allegation that the rezoning of the nearby tract will reduce the value of his land).

¶ 10 In such a case, a landowner must show that (s)he will suffer "special damages distinct from the rest of the community." *Lancaster*, 334 N.C. at 503 n.4, 434 S.E.2d at 610 n. 4; *Cherry Cmty. Org. v. City of Charlotte*, 257 N.C. App. 579, 583, 809 S.E.2d 397, 400 (2018) (landowner only has standing to challenge a zoning ordinance if (s)he alleges "special damages distinct from the rest of the community").

¶ 11 Here, the complaint alleges that all but one of the nearby tracts represented by Plaintiffs do not share any border with the rezoned Property. And the one tract which does border the Property also borders the 150 acres which is already zoned MPD-CZ. Plaintiffs, otherwise, allege that the rezoning of the Property "has caused and will continue to cause diminution in the value of their property, will cause adverse secondary effect to their property due to noise, traffic, pollution, destruction of the rural character of the surrounding area, and will impair the use and enjoyment of their property."

¶ 12 We have carefully reviewed these and the other allegations in the complaint and conclude that Plaintiffs have failed to show how the rezoning of this 12-acre Property, especially where the prior rezoning of the 150 acres adjacent to the Property is not being challenged, causes damages that is distinct from other nearby properties.

IV. Conclusion

¶ 13 We hold that the allegations in Plaintiffs' complaint fail to establish standing sufficient to challenge the legislative act of the County to enact the Ordinance. We, therefore, affirm Judge Baddour's order dismissing this action.

AFFIRMED.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).